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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
Washington, DC 20529-2090



**U.S. Citizenship
and Immigration
Services**

M₁

FILE:



Office:



Date: **DEC 02 2010**

IN RE:

Applicant:



APPLICATION: Application for Temporary Protected Status under Section 244 of the
Immigration and Nationality Act, 8 U.S.C. § 1254

ON BEHALF OF APPLICANT: Self-represented

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the Vermont Service Center. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

Thank you,

A handwritten signature in black ink, appearing to read "Perry Rhew".

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The application was denied by the Director, [REDACTED] and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained.

The applicant claims to be a citizen of [REDACTED] who is seeking Temporary Protected Status (TPS) under section 244 of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1254.

The director denied the application because the applicant failed to establish: 1) she was eligible for late registration; 2) her nationality; and 3) her qualifying continuous residence in the United States since February 13, 2001.

On appeal, the applicant asserts that she entered the United States on January 12, 2001, with an F-1 visa, which expired on July 26, 2007. The applicant asserts that she is eligible for TPS as a late registrant because she had a student visa during the initial registration period. The applicant asserts that she had presented sufficient evidence to establish continuous residence in the United States, and provides copies of documents that were previously submitted.

Section 244(c) of the Act, and the related regulations in 8 C.F.R. § 244.2, provide that an applicant who is a national of a foreign state is eligible for TPS only if such alien establishes that he or she:

- (a) Is a national of a state designated under section 244(b) of the Act;
- (b) Has been continuously physically present in the United States since the effective date of the most recent designation of that foreign state;
- (c) Has continuously resided in the United States since such date as the Secretary may designate;
- (d) Is admissible as an immigrant except as provided under section 244.3;
- (e) Is not ineligible under 8 C.F.R. § 244.4; and
- (f)
 - (1) Registers for Temporary Protected Status during the initial registration period announced by public notice in the FEDERAL REGISTER, or
 - (2) During any subsequent extension of such designation if at the time of the initial registration period:
 - (i) The applicant is a nonimmigrant or has been granted voluntary departure status or any relief from removal;
 - (ii) The applicant has an application for change of status, adjustment of status, asylum, voluntary

departure, or any relief from removal which is pending or subject to further review or appeal;

(iii) The applicant is a parolee or has a pending request for parole; or

(iv) The applicant is a spouse or child of an alien currently eligible to be a TPS registrant.

- (g) Has filed an application for late registration with the appropriate Service director within a 60-day period immediately following the expiration or termination of conditions described in paragraph (f)(2) of this section.

The term *continuously physically present*, as defined in 8 C.F.R. § 244.1, means actual physical presence in the United States for the entire period specified in the regulations. An alien shall not be considered to have failed to maintain continuous physical presence in the United States by virtue of brief, casual, and innocent absences as defined within this section.

The term *continuously resided*, as defined in 8 C.F.R. § 244.1, means residing in the United States for the entire period specified in the regulations. An alien shall not be considered to have failed to maintain continuous residence in the United States by reason of a brief, casual and innocent absence as defined within this section or due merely to a brief temporary trip abroad required by emergency or extenuating circumstances outside the control of the alien.

Persons applying for TPS offered to [REDACTED] must demonstrate continuous residence in the United States since February 13, 2001, and continuous physical presence in the United States since March 9, 2001. The designation of TPS for [REDACTED] has been extended several times, with the latest extension valid until March 9, 2012, upon the applicant's re-registration during the requisite time period.

The burden of proof is upon the applicant to establish that he or she meets the above requirements. Applicants shall submit all documentation as required in the instructions or requested by U.S. Citizenship and Immigration Services (USCIS). 8 C.F.R. § 244.9(a). The sufficiency of all evidence will be judged according to its relevancy, consistency, credibility, and probative value. To meet his or her burden of proof the applicant must provide supporting documentary evidence of eligibility apart from his or her own statements. 8 C.F.R. § 244.9(b).

The initial registration period for Salvadorans was from March 9, 2001, through September 9, 2002. To qualify for late registration, the applicant must provide evidence that during the initial registration period she fell within at least one of the provisions described in 8 C.F.R. § 244.2(f)(2) above.

The AAO conducts appellate review on a *de novo* basis. See *Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004).

USCIS records reflect that the applicant was lawfully admitted into the United States on January 12, 2001, with an F-1 nonimmigrant visa. The applicant's nonimmigrant status expired on July 26, 2007. The applicant filed her initial TPS application [REDACTED] on August 27, 2007. In a Notice of Intent to Deny (NOID) issued on January 23, 2008, the director noted that the applicant had established late registration eligibility as she was in a nonimmigrant status during the initial registration period. The director advised the applicant that she had not established continuous residence and continuous physical presence as USCIS records reflected that she had departed the United States on July 14, 2001 and returned on January 16, 2002. The director requested the applicant to submit evidence establishing her continuous residence since February 13, 2001, and her continuous physical presence since March 9, 2001, specifically from July 15, 2001 to January 16, 2002. On May 16, 2008, the director determined that the applicant had not established continuous residence and continuous physical presence in the United States as USCIS had not received a response to the NOID. The director denied the application due to abandonment. No motion was filed from the denial of this application.¹

The applicant filed the current TPS application on February 23, 2009. On July 20, 2010, the director denied the application because the applicant "had not provided any new and compelling evidence that overcomes the reason(s) for denying your initial TPS application." The director noted that the applicant had failed to establish her nationality, failed to establish eligibility for late registration and failed to establish continuous residence and continuous physical presence in the United States during the requisite periods.

However, a review of the evidence submitted throughout the application process does not support the director's findings. Specifically, at the time the initial TPS application was filed, the applicant submitted copies of:

- Her Form I-20, Certificate of Eligibility for Nonimmigrant (F-1) Student Status.
- Her El Salvadoran driver's license issued on November 3, 2000.
- Her [REDACTED] passports issued November 14, 2000, and November 22, 2005. The passport contains two legible admittance stamps (January 12, 2001 and January 16, 2002) and one indecipherable admittance stamp into the United States.
- Her F-1 visa issued on December 21, 2000.
- Her employment authorization card (274.12(c)(03)) valid from August 1, 2006 to July 26, 2007.
- Statements of earnings for pay periods March 2001 and April 2001.
- Bank statements from [REDACTED] and [REDACTED] from March 2002 to November 2004 and from August 2005 to July 2007, respectively.

¹ A denial due to abandonment may not be appealed, but an applicant may file a motion to reopen. 8 C.F.R. § 103.2(b)(15).

- A college diploma from [REDACTED] University-[REDACTED] issued May 26, 2006.
- Earnings statements from [REDACTED] Scientific, LLC for the pay periods ending July 14, 21 and 28, 2007.

The applicant submitted a letter dated February 16, 2008, indicating that she was submitting information to establish her residence in the United States since February 13, 2001. In a letter dated June 6, 2008, the applicant indicated that she did respond to the NOID on February 21, 2008. As evidence, the applicant provided a copy of an Express Mail receipt dated February 21, 2008, from the United States Postal Service addressed to the [REDACTED]. The applicant asserted that she was providing copies of her response, which consisted of additional copies of documents that were previously submitted with her initial TPS application along with:

- College transcripts from [REDACTED] University-[REDACTED] from spring 2001 to spring 2006, specifically summer 2001 and fall 2001.
- A student account statement from [REDACTED] University-[REDACTED] for the fall of 2003, 2004 and 2005; spring of 2004, 2005 and 2006; and winter 2006.
- Statements of earnings for pay periods for May 2001, July 2001, August 2001 and September 2001.
- A student employment payroll transaction form dated February 16, 2001.
- A letter dated February 12, 2001 from [REDACTED] University to the Social Security Administration regarding the social security card for employment purposes on the behalf of the applicant.
- A letter dated February 15, 2001, from the Social Security Administration regarding the applicant's social security card.

USCIS records reflect that during 2001 and 2002, the applicant entered the United States on January 12, 2001 and departed July 14, 2001, entered August 3, 2001 and departed December 16, 2001, entered January 16, 2002 and departed March 24, 2002, and entered on March 30, 2002. These absences meet the statutory requirement of brief, casual and innocent. Section 244(c)(4) of the Act.

At the time the initial application was filed, the applicant had established her nationality as she provided copies of her [REDACTED] passport. The applicant also established eligibility as a late registrant as she was a nonimmigrant during the requisite periods. In response to the NOID, the applicant had submitted sufficient evidence to establish her continuous residence and continuous physical presence in the United States during the requisite periods as required under 8 C.F.R. §§ 244.2(b) and (c). Accordingly, the director's decision of July 20, 2010, to deny the application on these issues will be withdrawn, and the application will be approved.

An alien applying for TPS has the burden of proving that he or she meets the requirements enumerated above and is otherwise eligible under the provisions of section 244 of the Act. The applicant has met this burden.

Finally, the director's decision of May 16, 2008, was issued in error. The AAO has no jurisdiction over the decision as it was denied due to abandonment. The director, however, may *sua sponte* reopen any adverse decision pursuant to 8 C.F.R. § 103.5(a)(5)(i).

ORDER: The appeal is sustained.